

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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R. DAVIS HOWE, individually and derivatively,

Plaintiff,

- against -

THE BANK OF NEW YORK MELLON, as  
Indenture Trustee, BIMINI CAPITAL  
MANAGEMENT, INC., and HEXAGON  
SECURITIES LLC,

Defendants,

and THE BANK OF NEW YORK MELLON, as  
Indenture Trustee, and PREFERRED TERM  
SECURITIES XX, LTD.,

Nominal Defendants.  
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No. 09-CV-10470 (HB)

ECF Case

DECLARATION OF  
BENJAMIN P. MCCALLEN

I, Benjamin P. McCallen, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am associated with the law firm of Willkie, Farr & Gallagher LLP, counsel for Defendant Bimini Capital Management, Inc. ("Bimini") in the above-captioned action. I submit this declaration in support of Defendants' and Nominal Defendants' Motion for Summary Judgment, dated December 7, 2010.

2. Annexed hereto are true and correct copies of the following documents:

EXHIBIT	DOCUMENT	BATES RANGE
1	Memorandum of Law in Support of Motion of Nominal Defendant Preferred Term Securities XX, Ltd. to Dismiss the Amended Complaint, dated March 26, 2010	
2	First Amended Complaint, dated February 19, 2010	
3	Indenture of Preferred Term Securities XX, Ltd., dated December 15, 2005	
4	Excerpts of the transcript of the deposition of Robert Cauley, taken September 28, 2010 (pp.	

	37-38; 70-72; 82-83; 105; 119-120; 125; 169-170; 213-214)	
5	Excerpts of Bimini 10-Q, for the period ended September 30, 2009) at Note 5	
6	Excerpts of Bimini 10-Q, for period ended March 31, 2009, Management Discussion and Analysis of Financial Condition and Results of Operations, Note 12	
7	Excerpts of Bimini 10-Q, for period ended March 31, 2005 at 23	
8	Excerpts of the transcript of the deposition of Scott Friedland, taken November 12, 2010 (pp. 94-95; 194-195)	
9	<u>The News Tribune, Fed Rides to the Rescue, But Will it be Enough?</u> , March 18, 2008.	
10	<u>Puzzanghera, Jim, Los Angeles Times, WaMu Failed Because of Run on Bank, Former Regulatory Chief Says</u> , April 17, 2010.	
11	<u>Levy, Ari et al., Bloomberg News, IndyMac Seized by U.S. Regulators Amid Cash Crunch</u> , July 11, 2008	
12	Excerpts of the transcript of the deposition of David T. McIndoe, taken October 4, 2010 and October 6, 2010 (p. 20-23; 25-28; 46-50; 57-65; 73-76; 80-107; 121-124; 267-272; 274-275; 279; 400-403; 452)	
13	Chart of Bimini stock price attached to Expert Report of Scott Friedland (source of data: Bloomberg L.P.)	
14	September 26, 2008 Offer to Purchase for Cash Any and All of the Outstanding Fixed/Floating Rate Capital Securities of Bimini Capital Trust II	BNYM 002541
15	Email from Chris Clifton to Robert Cauley, dated November 21, 2008	BC0000004
16	Notice to Investors in PreTSL XX and PreTSL XXI	BC0000020
17	Excerpts of the transcript of the deposition of Michael Ludlow, taken September 22, 2010 (pp. 21-23; 60)	
18	Excerpts of the transcript of the deposition of Stephen Don Elison, taken October 12, 2010 (pp. 14; 57-60; 119-121; 124-126; 162-169; 181-182; 208-209)	
19	Email from Stephen Elison to Greg Cope and Mark Wickersham, dated May 26, 2009 (Pl. Ex. 111)	BNYM 019342 - BNYM 019363

20	Excerpts of the transcript of the deposition of Mark Wickersham, taken October 20, 2010 (pp. 30-32; 39; 90-91; 93-94; 116; 120-124; 157-159; 160-162)	
21	Email from Stephen Elison to Mark Wickersham, dated June 17, 2009 (Pl. Ex. 113)	BNYM 016918 - BNYM 016920
22	Letter from Robert Cauley to Christopher Grose, dated June 19, 2009 (Pl. Ex. 22)	BC0008137 – BC0008138
23	Email from Stephen Elison to Greg Cope and Mark Wickersham, dated June 19, 2009 (Pl. Ex. 250)	BNYM 016947 – BNYM 016948
24	Email from Chris Grose to Dianne Scott and Mark Koontz, dated June 23, 2009 (Pl. Ex. 116)	PTSXX003217 – PTSXX003221
25	Mark Wickersham's handwritten Notes, dated June 23, 2009 (Pl. Ex. 216)	HW_00030887 – HW_00030888
26	Unredacted copy of Mark Wickersham's handwritten notes, dated June 23, 2009 (Pl. Ex. 216A)	
27	Excerpts of the transcript of the deposition of S. Gregory Cope, taken October 20, 2010 (pp. 195-196)	
28	Email from Michael Ludlow to Robert Cauley, dated June 23, 2009 (Pl. Ex. 172)	BC0003471 – BC0003472
29	Email from Greg Cope to Jason Norton, dated October 29, 2009	HW_00010721
30	Memorandum from David McIndoe and Mark Wickersham to Amy Williams and Jack Molenkamp, dated June 24, 2009 (Pl. Ex. 244A)	HW_00031116-00031121
31	Memorandum from David McIndoe and Mark Wickersham to Amy Williams and Jack Molenkamp, dated June 24, 2009 (Pl. Ex. 244B)	HW_00031354-31359
32	Memorandum from David McIndoe and Mark Wickersham to Amy Williams and Jack Molenkamp, dated June 29, 2009 (Pl. Ex. 244C)	HW_00031439-00031447
33	Memorandum from David McIndoe and Mark Wickersham to Amy Williams and Jack Molenkamp, dated June 29, 2009 (Pl. Ex. 244D)	HW_00031360-00031365
34	Memorandum from David McIndoe and Mark Wickersham to Amy Williams and Jack Molenkamp, dated June 29, 2009 (Pl. Ex. 244E)	HW_00031366-00031377
35	Memorandum from David McIndoe and Mark Wickersham to Amy Williams and Jack Molenkamp, dated June 29, 2009 (Pl. Ex. 244F)	HW_00031448-00031464
36	Memorandum from David McIndoe and Mark Wickersham to Amy Williams and Jack Molenkamp, dated June 29, 2009 (Pl. Ex. 244G)	HW_00031466-00031482

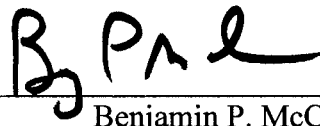
37	Memorandum from David McIndoe and Mark Wickersham to Amy Williams and Jack Molenkamp, dated June 29, 2009 (Pl. Ex. 244H)	HW_00031378-00031390
38	Memorandum from David McIndoe and Mark Wickersham to Amy Williams and Jack Molenkamp, dated June 29, 2009 (Pl. Ex. 244I)	HW_00031177-00031184
39	Memorandum from David McIndoe and Mark Wickersham to Amy Williams, Jack Molenkamp and Members of the Opinion Committee, dated July 7, 2009 (Pl. Ex. 244J)	HW_00030948-00030959
40	Memorandum from David McIndoe and Mark Wickersham to Amy Williamsn Jack Molenkamp and Members of the Opinion Committee, dated July 7, 2009 (Pl. Ex. 244K)	HW_00030973-00030984
41	Memorandum from David McIndoe and Mark Wickersham to Amy Williams, Jack Molenkamp and Members of the Opinion Committee, dated July 7, 2009 (Pl. Ex. 244L)	HW_00031391-00031402
42	Memorandum from David McIndoe and Mark Wickersham to Amy Williams, Jack Molenkamp and Members of the Opinion Committee, dated July 8, 2009 (Pl. Ex. 244M)	HW_00030961-00030972
43	Memorandum from David McIndoe and Mark Wickersham to Amy Williams, Jack Molenkamp and Members of the Opinion Committee, dated July 8, 2009 (Pl. Ex. 244N)	HW_00031403-00031414
44	Memorandum from David McIndoe and Mark Wickersham to Amy Williams, Jack Molenkamp and Members of the Opinion Committee, dated July 8, 2009 (Pl. Ex. 244O)	HW_00031199-00031210
45	Memorandum from David McIndoe and Mark Wickersham to Amy Williams, Jack Molenkamp and Members of the Opinion Committee, dated July 8, 2009 (Pl. Ex. 244P)	HW_00031506-00031518
46	Memorandum from David McIndoe and Mark Wickersham to Amy Williams, Jack Molenkamp and Members of the Opinion Committee, dated July 8, 2009 (Pl. Ex. 244Q)	HW_00031222-00031233
47	Memorandum from David McIndoe and Mark Wickersham to Amy Williams, Jack Molenkamp and Members of the Opinion Committee, dated July 8, 2009 (Pl. Ex. 244R)	HW_00031519-00031536
48	Memorandum from David McIndoe and Mark Wickersham to Amy Williams, Jack Molenkamp and Members of the Opinion Committee, dated July 10, 2009 (Pl. Ex. 244S)	HW_00031546-00031559

49	Memorandum from David McIndoe and Mark Wickersham to Amy Williams, Jack Molenkamp and Members of the Opinion Committee, dated July 14, 2009 (Pl. Ex. 244T)	HW_00031560-00031573
50	Final Hunton opinion analysis memorandum, dated July 14, 2009 (Def. Ex. 26)	HW_00001744 – HW_00001755
51	Email from Amy Williams to Mark Wickersham and Jack Molenkamp, dated July 20, 2009 (Pl. Ex. 227)	HW_00031043 – HW 00031045
52	Legal opinion of Hunton & Williams LLP, dated October 21, 2009 (Pl. Ex. 197)	BC0001197-0001198
53	Email from Christopher Grose to DTCC distributing Notice of Extension of Response Time for Offer and Request for Direction, dated July 30, 2009	BNYM 005636-005649
54	Email from Christopher Grose to DTCC distributing Notice of Increase in Offer Price and Extension of Response Time for Offer and Request for Direction, dated August 27, 2009	BNYM 006998-007011
55	Email from Christopher Grose to Mark Wickersham, dated October 15, 2009	BNYM 010669-010683
56	Email from Christopher Grose to DTCC distributing Notice of Addition of Cash or Stock Payment for Consent and Extension of Response Time for Offer and Request for Direction, dated October 1, 2009	BNYM 008911-008942
57	Email from Chris Grose to Mark Wickersham, dated October 15, 2009 (Pl. Ex. 129)	BNYM 004042 – BNYM 004054
58	Excerpts of Bimini 8-K, dated October 21, 2009	
59	Excerpts of Expert Report of John E. Costango and Professor Bradford Cornell	
60	Excerpts of the transcript of the deposition of R. Davis Howe Jr., taken September 20, 2010 (pp. 8-9; 11-12; 15-16; 19; 26-37; 41; 97-99; 105-106; 125-129; 131; 139-140; 191-195; 209-211; 219-223)	
61	Email from Robert Cauley to Dave Howe, dated September 24, 2008 (Def. Ex. 3)	RDH000298
62	Handwritten Notes of Elizabeth Gunn (Def. Ex. 6)	RDH003586 – RDH003587
63	Handwritten Notes of R. Davis Howe (Def. Ex. 7)	RDH000009 – RDH000013
64	Email from Jim Wingett to Beth Gunn, dated February 20, 2009 (Def. Ex. 42)	BC0006407 – BC0006411
65	Excerpts of the transcript of the deposition of Douglas Duncan, taken October 14, 2010 (pp.	

	79-81; 99-100; 102; 123)	
66	Email from Jim Wingett to Doug Duncan, dated September 25, 2008 (Def. Ex. 38)	RDH000305 – RDH000307
67	Email from Janet Gerber to all Wolf River employees, dated July 27, 2009 (Def. Ex. 14)	RDH001407 - RDH001420
68	Email from Beth Gunn to Howe and others, dated September 2, 2009 (Def. Ex. 19)	RDH001457 – RDH001470
69	Email from Jim Wingett to R. Davis Howe, Jr. and others, dated October 22, 2009 (Def. Ex. 21)	RDH001509 – RDH001511
70	Memorandum of Law in Support of the Motion of Defendant and Nominal Defendant BNY Mellon to Dismiss First Amended Complaint, dated March 26, 2010	
71	Reply Memorandum of Law in Support of the Motion of Defendant and Nominal Defendant BNY Mellon to Dismiss First Amended Complaint, dated May 7, 2010	
72	Affidavit of Stuart Rothenberg, sworn to March 24, 2010 (“Rothenberg Aff.”), Ex. 7 (consent tracker)	
73	Email from Christopher Grose to Stephen Elison, dated October 20, 2009	BNYM 019736-019738
74	Memorandum of Law in Support of the Motion of Defendants Bimini Capital Management, Inc. and Hexagon Securities, LLC to Dismiss the First Amended Complaint, dated March 26, 2010	
75	Reply Memorandum of Law in Support of the Motion the Defendants Bimini Capital Management, Inc. and Hexagon Securities, LLC to Dismiss the First Amended Complaint, dated May 7, 2010	
76	Excerpts of Expert Report of Z. Christopher Mercer (Def. Ex. 47)	
77	Excerpts of Offering Circular of Preferred Term Securities XX, Ltd., dated December 16, 2005	
78	Confirmations of Plaintiff’s purchases of Income Notes in PreTSL XX	RDH003596-003600
79	Rothenberg Aff., Ex. 3 (Specimen Income Note)	
80	Excerpts of the transcript of the deposition of Christopher Grose, taken September 24, 2010 (pp. 92; 95; 104-105; 108-111; 129)	
81	Mark Wickersham’s handwritten notes, dated May 7, 2009	HW_0030879-0030880
82	Email from Stephen Elison to Mark Wickersham and Greg Cope, dated June 19, 2009	BNYM 019324
83	Email from Greg Cope to Jason Norton, dated	HW_00010721-0010722

	October 29, 2009	
84	Email from Mark Wickersham to Stephen Elison, dated July 9, 2009	BNYM 017151-53
85	Email from Christopher Grose to DTCC distributing Notice of Offer and Request for Direction, dated July 2, 2009	BNYM 005312-005325
86	Email from Christopher Grose to DTCC distributing Notice of Extension of Response Time for Offer and Request for Direction, dated September 11, 2009	BNYM 007816-007829
87	Email from Stephen Elison to Christopher Grose, Christopher Conrady, Elizabeth Howard, Ives Faran, Suewan Johnson and Susan Chu, dated October 19, 2009	BNYM 019734-019735
88	Email from Mark Wickersham to Hunter Haas, Peter Lopez, Stephen Elison and Christopher Grose, dated October 21, 2009	BC0000358-0000363
89	Stipulation and Order of Voluntary Dismissal with Prejudice of Claims Against Hexagon Securities, LLC	
90	Indenture Schedule A-8	BNYM 000630
91	PreTSL XX "Summary Report" dated December 22, 2009	BNYM 003075- BNYM 003102

I declare under penalty of perjury that the foregoing is true and correct.



Benjamin P. McCallen

Dated: December 7, 2010  
New York, New York